IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1994 OF 2005

Shri. Varif Fali Kangh ...Petitioner

Versus

Krishnakant Keshav Lad & Anr ...Respondents

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Mr. Jahingir Khajotia, Advocate for Petitioner

Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 23RD AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner has prayed for quashing of process issued against him in Criminal Case No. 3419 of 1999 which is pending in the Court of learned J.M.F.C. 5th Court at Thane. In the said case, process has been issued against the petitioner under Section 138 of Negotiable Instruments Act.

3. The petitioner had preferred an application for recalling of process before the learned Magistrate. The said application came to be rejected by order dated 22.3.2005. In view of the decision of the

Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. reported in (2004) 7 SCC 338**, it is clear that the Magistrate has no power to recall the process. In this view of the matter, I am not inclined to interfere with the order of the Magistrate dated 22.3.2005.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, I am of the opinion that the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the petitioner to prefer revision before the concerned Sessions Court. The learned advocate for the petitioner states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today. It is made clear that the revision shall be preferred in respect of the order of the Magistrate issuing process and not in respect of the order of the Magistrate dated

22.3.2005 whereby the application of the petitioner for recalling of process is rejected.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. Writ Petition is disposed of.

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